

Message Text

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ACTION L-03

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SUBJECT: REVISION OF ANTI-TERRORISM DECREE-LAW

REF: (A) MADRID 0957; (B) MADRID 6038

1. THE REVISION OF THE AUGUST 1975 ANTI-TERRORISM DECREE-LAW ANNOUNCED FOLLOWING THE CABINET MEETING FRIDAY, 6 FEB, BY JUSTICE MINISTER GARRIGUES (SEE REF A) ANNULS, PENDING EXAMINATION BY THE COMMITTEE OF LEGISLATIVE COMPETENCY OF THE "CORTES," 14 ARTICLES, WITH THE INTENTION, AS GARRIGUES EXPLAINED AND AS THE FIRST ARTICLE OF THE NEW DECREE-LAW SPECIFIED, OF RETURNING TERRORIST ACTS TO THE ORDINARY JURISDICTION. EXEMPTED, HOWEVER, WERE TERRORIST ACTS COMMITTED BY ARMED GROUPS OF A PARAMILITARY ORGANIZATION AND INTENDED TO DISRUPT PUBLIC ORDER, THESE REMAIN UNDER MILITARY JURISDICTION BY ARTICLE 294B OF THE CODE OF MILITARY JUSTICE. IT WAS CLAIMED BY GARRIGUES THAT THIS ACTION

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REVERSED THE ORDER OF JURISDICTION PRESENTLY IN EFFECT BY

MAKING MILITARY JURISDICTION NOW SUBORDINATE TO CIVIL JURISDICTION.

2. AMONG THE ARTICLES ANNULLED WERE THOSE WHICH MUZZLED THE PRESS BY THREATENING WITH FINES, IMPRISONMENT AND SUSPENSION JOURNALISTS WHO CRITICIZED GOVT ANTITERRORIST ACTIONS OR WHO "PUBLICIZED" THE ACTIONS OF TERRORISTS. ALSO ABOLISHED WERE THE MANDATORY DEATH SENTENCE AND THE "SPECIAL SUMMARY" PROCEDURES IN MILITARY TRIALS WHICH WOULD, HOWEVER, REMAIN "SUMMARY." ALSO ANNULLED WAS THE ARTICLE WHICH HAD GRANTED THE TRIAL JUDGE THE AUTHORITY TO REMOVE AT HIS DISCRETION THE LAWYERS FOR DEFENSE AND EVEN TO HOLD THE TRIAL WITH ONLY A COURT-APPOINTED DEFENSE LAWYER PRESENT IF THE LAWYERS CHOSEN BY THE DEFENDANT WERE ABSENT "FOR WHATEVER REASON." UNDER THE OLD ARTICLE, ANY LAWYER REMOVED FROM SUCH A TRIAL "FOR CAUSE" WOULD BE INELIGIBLE TO PARTICIPATE IN A TRIAL UNDER THIS DECREE-LAW FOR ONE YEAR.

3. THE SEVEN RETAINED ARTICLES OF THE EARLIER DECREE-LAW WOULD CONTINUE IN EFFECT FOR ONE YEAR UNTIL THE LAW ON "DEFENSE OF THE STATE"

HAS BEEN PREPARED. FOUR OF THESE STILL LEAVE THE POLICE WIDE POWERS OF ARBITRARY ACTION AND DETENTION. NO. 6 MAKES UNLAWFUL THE CONSTRUCTION OF HIDING-PLACES (SAFEHAVENS) WITHOUT REFERENCE TO THEIR EVER HAVING BEEN USED. NO. 7 MAKES UNLAWFUL A WIDE RANGE OF ACTIVITIES WHICH IDENTIFY PERPETRATORS AS TERRORISTS: POSSESSION WITHOUT LICENSE OF EXPLOSIVES, POSSESSION OF EXPLOSIVE MANUALS, POSSESSION OF GUERRILLA MANUALS, AND ASSISTANCE IN LODGING, TRAVEL OR COMMUNICATION TO ANYONE IMPLICATED AS A MEMBER OF A TERRORIST GROUP. NO. 13 PERMITS THE DETENTION OF A SUSPECTED TERRORIST FOR UP TO 10 DAYS BEFORE HE MUST BE TURNED OVER TO THE COMPETENT JUDICIAL AUTHORITY. NO. 14 ALLOWS ENTRY AND SEARCH ON POLICE AUTHORITY ALONE. THE NEW DECREE-LAW ADDS AS WELL THE MAINTENANCE OF "PEOPLES PRISONS" TO THE LIST OF TERRORIST ACTIVITIES.

4. THIS ANNOUNCEMENT BY JUSTICE MINISTER GARRIGUES MARKS THE SECOND STEP BY THE GOVT, THE FIRST STEP BEING THE CONSTITUTION OF THE MIXED CABINET-NATIONAL COUNCIL COMMISSION, TO FULFILL THE REFORM PROGRAM SKETCHED BY PRIME MINISTER ARIAS IN HIS LIMITED OFFICIAL USE

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JAN 28 ADDRESS TO THE CORTES. BY USING A DECREE-LAW TO REVISE THE DECREE-LAW ON TERRORISM, THE GOVT HAS ALSO SIGNALLED ITS INTENTION TO MOVE EXPEDITIOUSLY TO ALTER LEGISLATION IN ORDER TO CARRY OUT FUNDAMENTAL REFORMS. AT THE SAME TIME, THE GOVT HAS RETAINED THOSE FEATURES OF THE ORIGINAL DECREE-LAW ON THE PREVENTION OF TERRORISM WHICH IT APPARENTLY CONSIDERS NECESSARY TO ASSIST IN THE FIGHT AGAINST ALL TYPES OF TERRORISM. BY NOT ABROGATING THE ENTIRE DECREE-LAW, HOWEVER,

THE GOVT MAY STILL BE ACCUSED OF FAILING TO GUARANTEE BASIC
FREEDOMS, PARTICULARLY THE RIGHT OF HABEAS CORPUS.
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